

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES BRANCH,

Plaintiff,

vs.

JAMES BARRETT,  
WASHINGTON STATE PATROL  
OFFICER HOYT, STATE OF  
WASHINGTON, STATE OF  
WASHINGTON PROSECUTOR'S  
OFFICE, and COUNTY OF  
WALLA WALLA,

Defendants.

NO. CV-10-5144-JPH

REPORT AND RECOMMENDATION TO  
DISMISS ACTION

By Order filed February 7, 2011, the court directed Mr. Branch to complete and file a financial affidavit as required by 28 U.S.C. § 1915(a)(1), or to pay the \$350.00 filing fee, to commence this action. The court cautioned that failure to comply would result in dismissal of this case for failure to prosecute. Plaintiff did not comply.

After the court recommended dismissal of this action on March 9, 2011 (ECF No. 7), Plaintiff filed documents requesting more time to comply with the court's directive. By Order filed March 28, 2011 (ECF No. 10), the court struck its prior Report and Recommendation and granted Plaintiff an additional thirty days to comply with the *in forma pauperis* requirements of 28 U.S. C. § 1915(a)(1), or to pay the filing fee. Plaintiff did not comply and has filed nothing further in this action. Accordingly, **IT IS**

1 **RECOMMENDED** this action be **DISMISSED without prejudice** for failure to  
2 prosecute under Fed. R. Civ. P. 41(b).

3 **OBJECTIONS**

4 Any party may object to a magistrate judge's proposed findings, recommendations  
5 or report within fourteen (14) days following service with a copy thereof. Such party  
6 shall file written objections with the Clerk of the Court and serve objections on all  
7 parties, specifically identifying the portions to which objection is being made, and the  
8 basis therefor. Any response to the objection shall be filed within fourteen (14) days after  
9 receipt of the objection. Attention is directed to FED. R. CIV. P. 6(e), which adds  
10 additional time after certain kinds of service.

11 A district judge will make a de novo determination of those portions to which  
12 objection is made and may accept, reject, or modify the magistrate judge's determination.  
13 The judge need not conduct a new hearing or hear arguments and may consider the  
14 magistrate judge's record and make an independent determination thereon. The judge  
15 may, but is not required to, accept or consider additional evidence, or may recommit the  
16 matter to the magistrate judge with instructions. *United States v. Howell*, 231 F.3d 615,  
17 621 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), FED. R. CIV. P. 72; LMR 4, Local  
18 Rules for the Eastern District of Washington.

19 A magistrate judge's recommendation cannot be appealed to a court of appeals;  
20 only the district judge's order or judgment can be appealed.

21 **IT IS SO RECOMMENDED.** The District Court Executive is directed to enter  
22 this Report and Recommendation and forward a copy to Plaintiff at his last known  
23 address. The District Court Executive shall set a case management deadline accordingly.

24 **DATED** this 11<sup>th</sup> day of May, 2011.

25 S/ James P. Hutton

26  
27 JAMES P. HUTTON  
28 UNITED STATES MAGISTRATE JUDGE